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SUPREME COURT OF THE UNITED STATES

RAYMOND MIRELES *v.* HOWARD WACO

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 91-311. Decided October 21, 1991

JUSTICE STEVENS, dissenting.

Judicial immunity attaches only to actions undertaken in a judicial capacity. *Forrester v. White*, 484 U. S. 219, 227-229 (1988). In determining whether an action is "judicial," we consider the nature of the act and whether it is a "function normally performed by a judge." *Stump v. Sparkman*, 435 U. S. 349, 362 (1978).<sup>1</sup>

Respondent Howard Waco alleges that petitioner Judge Raymond Mireles ordered police officers "to forcibly and with excessive force seize and bring" respondent into petitioner's courtroom. App. to Pet. for Cert. B-3, ¶ 7(a). As the Court acknowledges, ordering police officers to use excessive force is "not a 'function normally performed by a judge.'" *Ante*, at 4 (quoting *Stump v. Sparkman*, 435 U. S., at 362). The Court nevertheless finds that judicial immunity is applicable because of the action's "relation to a general

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<sup>1</sup>See also *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U.S. 719, 736-737 (1980) (judge not entitled to judicial immunity when acting in enforcement capacity); cf. *Mitchell v. Forsyth*, 472 U.S. 511, 520-524 (1985) (Attorney General not absolutely immune when performing "national security," rather than prosecutorial, function). Moreover, even if the act is "judicial," judicial immunity does not attach if the judge is acting in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S., at 357 (quoting *Bradley v. Fisher*, 13 Wall. 335, 351 (1872)).

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function normally performed by a judge." *Ante*, at 5.

Accepting the allegations of the complaint as true, as we must in reviewing a motion to dismiss, petitioner issued two commands to the police officers. He ordered them to bring respondent into his courtroom, and he ordered them to commit a battery. The first order was an action taken in a judicial capacity; the second clearly was not. Ordering a battery has no relation to a function normally performed by a judge. If an interval of a minute or two had separated the two orders, it would be undeniable that no immunity would attach to the latter order. The fact that both are alleged to have occurred as part of the same communication does not enlarge the judge's immunity.

Accordingly, I respectfully dissent.